

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 578 of 1995

For Approval and Signature:

Sd/-

Hon'ble MR.JUSTICE K.J.VAIDYA and
MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 yes 2 to 5 No.
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STATE OF GUJARAT

Versus

SULEMAN @ TAYGAR MAHMADHUSEN PIR

Appearance:

PUBLIC PROSECUTOR for Petitioner
MR MJ BUDDHBHATTI for Respondent No. 1

CORAM : MR.JUSTICE K.J.VAIDYA and
MR.JUSTICE D.G.KARIA

Date of decision: 19/06/96

ORAL JUDGEMENT

(Per Karia,J.):

The State has preferred this appeal against the judgment and order of conviction dated March 10,1995 passed by the learned Sessions Judge, Panchmahals at

Godhra whereby the respondent-accused came to be convicted for the offences under sections 363,366,342,376 read with section 511 of the Indian Penal Code. The learned Sessions Judge, having found the respondent guilty for the said offences, sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.200/-, in default to undergo further rigorous imprisonment for one month, for the offence under sections 363,366A of the Indian Penal Code. He also sentenced the respondent-accused to undergo rigorous imprisonment for three years and to pay a fine of Rs.500/-, in default to undergo further rigorous imprisonment for two months, for the offences under section 376 read with section 511 of the Indian Penal Code. The substantive sentences were ordered to run concurrently. The State has preferred this appeal so far as the quantum of sentence is concerned.

The prosecution-case, briefly stated, is that the respondent, Suleman alias Tiger Mahmadsen Pir, took or enticed P.W.1 Safiya, aged about five years, out of lawful guardianship of P.W.1, at about 18.00 hours on September 4, 1993 and took her to his room near Polan Dharmashala in Godhra and thereby committed offence under section 363 of the Indian Penal Code. The prosecution also alleged that the accused kidnapped or abducted P.W.1, Safiya Mahmadsen and enticed her in order to compel said P.W.1 to succumb to his desire and that he attempted to commit rape on her, at the same place and time, and thereby committed offence punishable under section 366A and 376 read with sec.511 of the Indian Penal Code.

We have heard Mr.M.A.Bukhari, learned Addl.Public Prosecutor, and also Mr.M.J.Budhbhatti, learned Advocate appearing for the respondent-accused. We have been taken through the relevant evidence and the material on record.

P.W.1, Safiya Mahmadsen, has narrated the incident, deposing that the accused person had taken her to his room where he attempted to commit rape on her by removing her pyjama. She also deposed that he also removed his pant and tried to commit rape on her. She was crying. In para 6 of her cross-examination, she has denied that she was deposing falsely on account of quarrels between her grandfather and the accused. She has, however, admitted that before she came for giving evidence, she was taken to the house of the Advocate

where she was taught about giving evidence in the Court.

P.W.2 Memuna Mahmadhusen, Exh.8, and P.W.3 Mahmadhusen Umarbhai, Exh.9 are the parents of the victim--minor girl Safiya. They have tried to support the prosecution case, deposing, inter alia, that P.W.1 Safiya, their daughter, was kept as an indoor patient in the hospital for about six days and the medical certificate was issued. P.W.3 lodged the complaint at Exh.11.

The important evidence of the case is of two doctors, namely, Dr. Ishwarbhai Somabhai Pandya at Exh.22, and Dr. Jatinkumar Mafatlal Shah at Exh.28. Dr. Pandya has testified that he was discharging his duties as a doctor in the Civil Hospital at Godhra on September 4, 1993, when P.W.1, Safiya, was brought to him for examination. The history of rape was reported to him. On examination, P.W.7, Dr. Pandya, found that P.W.1 Safiya was well built and well-nourished and that there was no mark of injury over her face, breast and other parts of chest, abdomen, thighs and perineum. No spots of blood, no stains of semen were found over lower abdomen, perineum, vulva and thighs. No stains of blood or semen on clothes which the girl had worn at the time of alleged rape were also noticed by the doctor. Her hymen was found to be intact. There was no evidence of any injury over hymen and forchettiae. Her vaginal swab was taken and examined for spermatozoa and no living or dead spermatozoa was seen. The clothes, venous blood and saliva in bulb were handed over to the Police for the purpose of sending it to Forensic Science Laboratory. The doctor issued certificate dated September 5, 1993, which is on record at Exh.19.

Dr. Jatinkumar Mafatlal Shah, P.W.8, Exh.28, has corroborated the version of P.W.7 Dr. Pandya. In para 3 of his deposition, he has stated that there were no external signs of injury on any part of the body of P.W.1 Safiya, such as face, breast, abdomen and her private part. There were no signs of semen or blood on her private part. Her hymen was found to be intact and there were no marks of any injury whatsoever.

The learned Sessions Judge having dealt with the aforesaid evidence, came to the conclusion that there was attempt to commit rape. In the facts and circumstances of

the case, the sentence imposed by the learned Sessions Judge cannot be said to be inadequate or ridiculous in law. Having considered the entire evidence and the material on record, we are of the opinion that the sentence imposed on the respondent-accused is sufficient and adequate and needs no interference.

Mr. Bukhari, the learned Additional Public Prosecutor, has not been able to show any other material on record so as to take any other view in respect of awarding sentence to the respondent-accused. We, therefore, do not see any substance in the appeal, so far as the sentence-part is concerned.

In the result, the appeal fails and is dismissed.
